

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR**

AMERICAN CRAFT BREWERY LLC d/b/a
SAMUEL ADAMS PENNSYLVANIA BREWERY COMPANY

Employer

and

Case 04-RC-230871

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 542

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

This case concerns whether a department of brewing operators in a brewery constitutes an appropriate unit. After carefully reviewing the evidence and balancing the traditional community-of-interest factors as set forth in *PCC Structurals, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017), I find that brewing operators constitute an appropriate unit since they work in a separate department with separate supervision, possess distinct skills and job functions, earn different pay, and have more rigorous training requirements than other employees.

Operating Engineers Local 542 (Petitioner) seeks to represent a bargaining unit of approximately 66 brewing operators¹ employed by American Craft Brewery, LLC d/b/a Samuel Adams Pennsylvania Brewery Company (Employer) at its brewery in Breinigsville, Pennsylvania. The Petitioner maintains that brewing operators are sufficiently distinct from other employees to constitute a separate bargaining unit. The Employer argues that only a wall-to-wall unit of all of its approximately 380 Brewery employees is appropriate, and seeks the inclusion of an additional 158 Packaging employees, 61 Warehouse employees, 70 Maintenance employees, and 18 Quality employees. The Employer contends that the 305 additional employees in these four other departments share a sufficient community of interest with the brewing operators to require their inclusion, because they share the same wage scale, benefits, and working hours, are all subject to the same work rules and labor relations policies, and have frequent interactions in a functionally integrated operation. The Petitioner and Employer agree that all other employees, administrative employees, office clericals, professional employees,

¹ This number includes four leads. As the parties did not raise or present testimony as to whether leads are supervisors, I do not decide that issue herein.

guards, and supervisors and managers should be excluded from any bargaining unit found to be appropriate.

A Hearing Officer of the Board held a hearing on November 27 and 28, 2018. Both parties filed briefs on December 5. As I find that the brewing operators constitute an appropriate unit that is sufficiently distinct from the employees in the Maintenance, Packaging, Warehouse, and Quality departments that the Employer seeks to include, I shall order an election in the petitioned-for unit.

I. OVERVIEW OF OPERATIONS

The Employer, a subsidiary of the Boston Beer Company, Inc., is a Massachusetts corporation with a corporate headquarters in Boston, Massachusetts. The Employer manufactures a variety of beer and mixed-blend alcoholic beverages in cans, bottles, and kegs at its facility located at 7880 Penn Drive in Breinigsville, Pennsylvania (Brewery). The Employer also operates breweries in Cincinnati, Ohio, Boston, Massachusetts, Miami, Florida, Los Angeles, California, and Coney Island, New York.

The Employer purchased the Brewery in 2007 from its prior owner, Diageo/TLC. For many years, several brewing companies, including Schaefer, Stroh's, Pabst, and Diageo/TLC have operated breweries at this location.² However, the building has undergone significant changes, including further automation, the installation of additional beer tanks and new water tanks, and the construction of a new fermentation cellar and package release cellar.

David Berwick is the Chief Executive Officer of The Boston Beer Company, Inc., and has an office in Boston. Quincy Trope is the Senior Vice President of Supply Chain and is based in Boston but also has an office at the Brewery. Luis Mar is the Director of Operation at the Brewery. Dana Miller is the Director of Human Resources at the Brewery, where she has an office, and she is also responsible for the Employer's Cincinnati operation.

The Brewery is divided into five main departments: (1) Brewing; (2) Packaging; (3) Maintenance; (4) Warehouse; and (5) Quality. Each of these departments has a manager who reports to Brewery Director Luis Mar.

II. BARGAINING HISTORY

There is no direct bargaining history as the Employer's employees at the Brewery have never been represented by a labor organization, nor has a petition been previously filed. However, when the facility was operated by three prior employers -- Schaefer, Stroh's and Pabst -- the employees were represented by at least two different labor organizations in a single wall-to-wall unit consisting of production, maintenance, utility, brewing, packaging, quality control,

² Although the record is not entirely clear as to when this occurred, it would appear that Schaefer operated the facility from 1981-1986; Stroh's and then Pabst operated it from 1986 until about 2000; and Diageo/TLC operated it from 2000 until 2007, when the Employer purchased the facility.

warehousing, and shipping and receiving employees. Although the Employer argues in its brief that this unit was initially found to be appropriate by the Board in *F. & M. Schaefer Brewing Co.*, 198 NLRB 323 (1972), that decision refers to the “Lehigh Valley Brewery” in Fogelsville, Pennsylvania and it is unclear whether the Brewery is the same facility as they are located in different towns.

The record contains little evidence concerning the operations of those prior employers or their similarities to the Employer’s current operation; their employees’ terms and conditions of employment; whether their brewing employees shared a distinct community of interest with any of the other employees at the facility; or whether the labor organizations at that time sought to represent the brewing employees in a separate bargaining unit. It is also undisputed that the Employer is not a successor employer to Schaefer, Stroh’s or Pabst. Indeed, only four of the current Brewing employees, two Warehouse employees and a few of the Packaging employees were employed by the previous operators of the site when it was unionized.

The employees at the Employer’s Cincinnati brewery are represented by Teamsters Local 1199 in a single wall-to-wall unit. That operation is similar to the Brewery, but is a smaller operation, with only one bottle line, one keg line, and no can line. The record contains no evidence as to how many employees are in the bargaining unit at the Cincinnati facility, how many employees work in each department, whether the brewing operators there have a distinct community of interest from any of the other employees, or whether Teamsters Local 1199 or any predecessor labor organization sought to represent the brewing operators in a separate bargaining unit.

III. THE RELEVANT LEGAL AUTHORITY

The Act requires that a petitioner seek representation of employees in *an* appropriate unit, not the most appropriate unit possible. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969).

Recently, in *PCC Structurals, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017), the Board rejected the overwhelming community of interest standard created in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *affd.* sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), and reinstated the traditional community-of-interest standard for assessing the appropriateness of a petitioned-for unit when the employer argues that the unit improperly excludes certain employees. Thus, once the Board determines that the employees in the unit sought by a petitioner share a community of interest, it next evaluates whether the interests of that group are “*sufficiently distinct* from those of other [excluded] employees to warrant the establishment of a separate unit.” *PCC Structurals*, *supra*, slip op. at 7, quoting *Wheeling Island Gaming*, 355 NLRB 637, 642 fn. 2 (2010) (emphasis in original).

Specifically, the inquiry is whether "excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members." *PCC Structurals*, supra, slip op. at 11, quoting *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016) (emphasis in original). In making this assessment, the Board examines whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *Id.*, slip op. at 11 (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). All relevant factors must be weighed in determining community of interest.

With respect to employee interchange, the Board looks to see if there is significant, widespread interchange among employees within the petitioned-for unit "suggest[ing] blurred departmental lines and a truly fluid work force with roughly comparable skills." See *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987) (where the Board found that a petitioned-for unit of 25 engineering department, locksmiths, and locksmiths helpers was an appropriate unit, rejecting the employers request to add the 1000 employees who were employed at the hotel to the unit).

The Board has long found that bargaining units may be appropriate based on craft status, or where the requested employees are a clearly identifiable and homogenous group with a community of interest separate and apart from other employees. In making unit determinations, the Board similarly considers whether a community of interest exists, and examines such factors as mutuality of interests in wages, hours and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Turner Industries Group, LLC*, 349 NLRB 428, 430 (2007); *Yuengling Brewing Co. of Tampa*, 333 NLRB 892 (2001).

In *Yuengling Brewing*, the Board found that a petitioned-for maintenance unit at a brewery constituted a distinct and cohesive grouping of employees appropriate for collective-bargaining purposes because there was no common supervision between the maintenance employees and the production employees, the maintenance work was highly skilled and maintenance employees were paid a higher wage, and there was no interchange between maintenance and production employees except for some overlapping of unskilled functions. 333 NLRB at 893-94. Although the Board noted that there was a significant degree of interaction between the maintenance and production employees, that factor, by itself, was not sufficient to negate the appropriateness of a separate maintenance unit. *Id.* at 893; see also *Ore-Ida Foods*, 313 NLRB 1016, 1019-1020 (1994); *Capri Sun*, 330 NLRB 1124 (2000).

While the Board also considers prior bargaining history, the weight given to a prior history of collective bargaining is "substantial" not "conclusive." *A.C. Pavement Stripping Co.*, 296 NLRB 206, 210 (1989). Less weight is given to such history when the employer is not a successor to the employer with the bargaining history. *Turner Industries Group*, supra, 349 NLRB at 431.

IV. THE FACTS

The Employer's property consists of 63 acres but the Brewery is contained within a single 883,849 square-foot building. It has six rail docks and 37 dock doors, and is about a quarter of a mile in length. It is comprised of six physically distinct and separate departments – Brewing; Maintenance, Offices (which comprises human resources, supervisory and managerial personnel), Packaging, and Warehouse. Since each department requires a badge for access, employees in one department can only enter another if they are authorized to do so. Despite the large size of the facility, employees are able to walk from one end of the facility to the other.

Brewing, where the product is made, is situated at the north end of the building. This area is known as the Brew House. The maintenance area for the Brewery is next to Brewing, followed by Packaging, where the product is carried from Brewing in a series of pipes and then placed in bottles or cans. The Warehouse, where product is stored either for use in making the product or for distribution when the product is completed, is located next to Packaging. A separate stand-alone building, called the South Warehouse is next to the Warehouse. It is used for additional storage, and houses a barrel room where beer ages for future distribution. Four employees work in the South Warehouse: two are brewing operators who work Monday through Friday maintaining the barrels,³ and two are Warehouse employees (one for day shift and one for evening shift). Each of the departments at the Brewery has a separate manager and supervisors, who are responsible for the operation of that department. The evidence concerning the operations of the Brewing, Packaging, Warehouse, Maintenance, and Quality departments is set forth below.

A. Brewing

Brewing Manager Scott Thornton oversees the Brewing department and the Brewing department has the following eight supervisors or managers who report to Thornton: Assistant Brewing Managers Bryan Baxter and Tyler Clsarik; Brewing Supervisors Jesse Federici, Michael Schneider, Scott Miller, Eugene Curtin, and Andrew Glass, and Brewing Operation Specialist Jason Foster. There are about 66 brewing operators in Brewing, and approximately 16 of them are on duty on any given shift. Other than one example of a temporary employee, Barry Plarr,⁴ who worked in Brewing about two years ago, the Employer does not utilize temporary employees in Brewing.

Brewing operators are responsible for creating the beer and other beverages and ensuring that the Brewery has the correct quality product available for packaging. All of the Brewing employees play a part in producing the final product before it is sent to Packaging. There are four main classifications in Brewing: (1) Yeast & Fermentation; (2) Fass & Filtration Center (FFC); (3) Cider CMB; and (4) Mixed Blend. Within those four classifications, there are 11 sub-classifications: Brew House Panel, Brew House Field, Yeast & Fermentation Cooler, Yeast & Fermentation Fasser, Yeast & Fermentation

³ The record disclosed that these individuals are brewing operators Jason Ambrose and James Groth.

⁴ Plarr is now employed as a regular full-time brewing operator.

Cleaner, CMB/Cider, FFC Panel, Fass & Filtration Center Field, Fass & Filtration Center PRT, Mixed Blend Panel and Mixed Blend Field. Brewing employees also work in the Pit, where the beer is connected from the tank to the pump and sent to Packaging. Brewing operators are all trained to work in the Pit and about 15 employees a year do so. About 40 percent of the product produced at the Brewery travels through the Pit in seven different tanks and has to be manually hooked up by a brewing operator. The rest of the production is automated.

The brewing operators begin their production process by unloading the necessary raw materials, such as yeast, hops, malt, dextrose, and apple juice concentrate, which their recipes require from the storage area or cooler area in the Brew House. These products arrive at the facility by tanker, truck, or rail and are unloaded at the Brew House by the brewing operators themselves. If the brewing operators need additional supplies from the Warehouse, non-employee drivers deliver the supplies to the Brewing department, and then brewing operators unload them. Warehouse employees do not handle raw material in the Brew House except that utility operators are responsible for delivering potentially hazardous materials like carbon dioxide and acid. If it is necessary to use a forklift to retrieve the product, the brewery operators operate the lift, which is kept in the Brewing department and is used only by brewing operators.

For beer production, brewing operators add ground malt and hops to water, bring it to temperature, separate the grains from liquid, and make “wort,” which is the liquid containing the sugar that is the basis for beer. The brewing operators then add yeast to the wort, and wait until it is fermented, which typically takes about seven days. Brewing operators run rapid analysis tests on the wort both during and after fermentation from their lab in Brewing. More in-depth and specialized tests are also conducted by Quality lab technicians (which is discussed in Section E, *infra*). After fermentation, the hops and spices are added, and the product is “fassed” or transferred from the fermentation tank to a storage tank by the brewing operator, where it may sit for up to 38 days in the root cellar.

The brewing operator is then responsible for ensuring that the correct beer is on the correct line. The beer then goes to FFC, where it is filtered (if the particular recipe requires filtration) and sent to the package release center to be prepared for packaging. Throughout the process, the brewing operators clean the tanks, transfer product, filter product, cool product, connect the tanks in the manual cellar to different packaging lines, and coordinate with the filler operators (in Packaging) to ensure that the tanks are set up correctly for the next products to be pulled onto the can, bottle or keg packaging lines. They also coordinate the cleaning in place of the product transfer lines to the fillers.

The Mixed Blend group, consisting of three employees per shift, follows a similar process for producing the alcoholic seltzer, hard cider, and alcoholic tea produced at the Brewery as set forth above. They operate out of the keg cooler area near the cold storage room, use different recipes, and require different fermentation and tank times. All of the brewing operators, including the Mixed Blend operators, use industrial automation computer software called Wonderware to perform their jobs. There is no evidence that this program is used elsewhere in the facility.

If brewing operators encounter a maintenance issue during the course of their shift, they advise their supervisor, who then notifies Maintenance. With respect to the Brewing department's interaction with Packaging, the record contains conflicting testimony as to the frequency of interaction, ranging from zero to 10 times per shift and from once per week to no interaction.

There is no dispute that the brewing operators are highly skilled and possess a unique expertise that is not shared by any other employees in the Brewery. Although the Employer does not require that brewing operators have a college degree prior to hire, about 40-50 percent of them have college degrees. The Employer also prefers that brew operators have two to five years of experience in the industry prior to their hire. Moreover, the record easily establishes that brewing operators are required to undergo far more rigorous training than the employees in Packaging, Warehouse, Maintenance, or Quality. After passing the Employer's on-line safety training, brewing operators receive on-the-job training between two to five months⁵ in each of the Brewing job classifications, depending on the complexity of the job. They do so primarily as apprentices by shadowing more experienced brewing operators. They also use on-line training modules that are specific to Brewing.

It takes about two months of training to become a fasser and three months of training to become a work cooler operator in Y&F, a tank cleaner, a Cider C&B operator, a FFC Fassing and Filtration operator (including a panel operator, outside operator, or pit operator), or a Brew House panel operator. Most brewing operators are cross-trained and fully qualified in about 30 tasks, which include, in addition to those already mentioned above: knowledge of recipes and the brewing process; troubleshooting skills when issues arise; ability to utilize the lab equipment; checking that carbohydrate chains are broken down; calibrating the pH probe; taking extensive weekly inventory of dry ingredients, hops, malts, and extracts; removing calcium buildup from tanks; and unloading delivery trailers and rail cars. All of the brewing operators are trained in fermentation, fassing, wort cooler operation, and tank cleaning, and it takes a year minimum to master those skills. As discussed later in Section F, brewing operators receive a \$2 per hour wage differential when they are fully qualified. Brewing operators are also encouraged to take an optional 100-hour online course in brewing which is paid for and offered by the Employer through Siebel. None of the employees in Packaging, Warehouse, Maintenance or Quality have taken this course. There is no evidence that any employees in these other departments require or receive such extensive training for their positions.

B. Packaging

In addition to Packaging Manager William Soehnlen, there are the following nine managers or supervisors in Packaging: Assistant Operations Manager Eric Madden, Packaging Operations Specialist Pam Gardner, and Packaging Supervisors Derek Holmes, Neil McCardie, Willie Torres, William Delaney, Barry McIlhaney, Larry Fritzinger, and Temporary Packaging Supervisor Ramie Moussa, who previously worked as a brewing operator. There are approximately 157 employees in Packaging.

⁵ It takes at least five months to train new brewing operators on the three classifications in FFC.

Packaging fills the bottles, cans, or kegs with the beer, cider, seltzer or tea, pasteurizes the product, and then places the packaged product onto a pallet, where it is shrink-wrapped and prepared for transfer to the Warehouse for distribution. Packaging employees oversee the two can lines, two bottle lines, and the variety pack areas. Approximately 40 Packaging employees (including three packaging leads) work in the following equipment center/job classifications: filler operator, tray packer; label operator; palletizer operator; packer operators; and box makers. Typically, five to six Packaging employees work on each can line and nine to ten Packaging employees work on each bottle line.

As noted above in Section A, the filler operator in Packaging regularly communicates with the brewing operator in the Pit (Pit operator) by email, radio or in person to coordinate the scheduling of the packaging and the selection of which tank to use. The two brewing operators working in the Pit may also coordinate with the Packaging employees a few times per shift to check setup levels and tank levels. Once the product has been packaged and the packaging has been inspected by the packaging operators, brewing operators, packaging employees, and quality technicians conduct “taste panels” to taste the product as it comes off the filler before it is released to the Warehouse for distribution. This tasting usually takes place daily and occurs in the Sensory Lab, which is located between Packaging, Brewing and Quality; however, this can also occur in a supervisor's office, the control room, in Packaging QA by the fillers, or elsewhere in Packaging. Taste panels are voluntary and take place on paid time.

Like brewing operators, Packaging employees complete an on-the-job training in the various classifications in Packaging. Such training typically takes three to four weeks to complete. Unlike the brewing operators, there is no requirement that Packaging employees be cross-trained on various positions or that they be “fully qualified” in order to receive a certain wage and they are not eligible for any wage differential.

C. Warehouse

Warehouse Manager James Testerman and Warehouse & Distribution Supervisor Josh Serfass oversee the Warehouse department. There are about 65 regular full-time employees in the Warehouse. The Employer also utilizes an unknown but significant number of temporary employees in the Warehouse.

Warehouse employees essentially load and unload trucks, and help prepare raw materials from the Warehouse or South Warehouse, where they are stored, for use in the Brew House. They also deliver packaging supplies such as glass, cans, labels, motherboards (the finished box) and wraps to Packaging for use there. Brewing or Packaging can either call the Warehouse or complete a form requesting these supplies or materials. Although Warehouse employees prepare these materials for delivery to the Brew House, non-employee third party drivers deliver the materials, and then brewing operators unload them. Similarly, warehouse employees keep counts of the ingredients in the coolers and in storage in the Warehouse, but brewing operators are responsible for taking inventory of their own materials in the Brew House. In the Mixed Blend area for Brewing,

Warehouse employees deliver the totes of flavorings and place them in the cooler that Warehouse shares with the brewing operators who mix the teas. There are two Warehouse employees assigned to the South Warehouse who perform all loading and unloading functions there.

Warehouse employees also retrieve the finished and packaged product from the conveyers in Packaging for storage in the Warehouse and for eventual shipping to wholesalers and vendors. Interaction between the Packaging and Warehouse employees is therefore frequent, as the palletizing operator in Packaging interfaces with all of the put away operators in Warehouse to discuss changeover, what product is coming, when it is coming, and if there are issues in packaging such as jams. Warehouse also supplies the palletizer operator with pallets to fill into the back of the palletizer where the finished product is placed. On the variety pack lines, Warehouse employees fill the pallet lifts with the material for Packaging operators to un-case and re-case the finished product.

Warehouse employees drive load trucks, fork trucks, and, if applicable, forklifts on which they are trained and certified. Warehouse employees generally start as “put away” for six months and then are trained on the loading dock for two weeks. Warehouse employees use two computer systems: PINC, which is a yard management system for moving trailers in and out of doors; and SAP, which is used for inventory moves, dropping orders, releasing loads to load trucks.

D. Maintenance

Engineering & Maintenance Manager Stephen Weber has the following eight supervisors that report to him in the Maintenance department: Maintenance Planning Supervisor William Fox; Brewery Maintenance and Utilities Manager Lew Hadesty; Maintenance Supervisor - Packaging Thomas Klein; Maintenance Reliability Supervisor Patrick McAgdon; Maintenance Supervisor - Packaging Edward Rutan; Maintenance and Reliability Specialist Matthew Renelli; Maintenance Supervisor - Packaging Todd Perkins; and Facility and Utilities Manager Patrick McGowan. Approximately 73 employees work in Maintenance. 18 are assigned to Brewing, 40 are assigned to Packaging (34 of whom are assigned to the Packing Floor), and nine are assigned to the Powerhouse, which produces steam and takes carbon dioxide from fermentation, compresses it to a liquid state, and injects it into product or to a waste stream for disposal. All Maintenance employees attend a daily morning staff meeting to discuss any pending operational issues that Maintenance must address.

Maintenance is centrally located in the Brewery, but Maintenance employees work throughout the building -- in the Brew House, on the Packing Floor, and in the Warehouse. Maintenance employees possess a variety of specialized skills including machining, pipefitting, welding, instrumentation, millwrighting, and ringing, and many of them have mechanical and electrical expertise. There are nine maintenance employees regularly assigned to Brewing, and Maintenance has a satellite maintenance shop in the Brew House where their tools and other supplies are stored.

There are seven job classifications in Maintenance: (1) maintenance technician; (2) instrumentation engineer; (3) Powerhouse operator engineer; (4) utilities technician; (5) machinist; (6) storekeepers; and (7) technical planners. Maintenance technicians are responsible for keeping the equipment operating and for performing preventative maintenance. Instrumentation engineers are responsible for the Brewery's automated systems whether in the Brew House, Powerhouse, Utilities, or on the Packing Floor. They are called when a machine has an issue and are responsible for the calibration and maintenance of all instrumentation. The Powerhouse operator technician operates the boilers; does rounds in the Brewery; performs maintenance on all of the utilities including the carbon dioxide compressors, compressed air systems, and water systems; takes care of the waste water streams; receives trucks with chemicals; and coordinates waste truck pickup. The utility maintenance technicians care for the yards and grounds, and perform general mechanical work around the building. The machinist, which is a particularly skilled job, is primarily responsible for rebuilding and repairing machines. The storekeepers receive items in the maintenance management system, count cycles, and perform inventory management. Technical planners ensure that they have right spare parts and contractors for the equipment and sequence of work. One technical planner is assigned to the Brew House.

Engineering & Maintenance Manager Stephen Weber testified that Maintenance employees interact with brewing operators in the Brew House "dozens of times" during a shift to discuss and time repair work and that the Powerhouse operator technician also interacts with brewing operators several times a week. Typically, if there is a maintenance issue in the Brew House, the Brew House supervisor calls the Maintenance supervisor or puts in a work order. Although Weber testified that brewing operators are able to call or radio Maintenance themselves too, Weber acknowledged that he had never received such a call himself nor could he describe any circumstance in which that had occurred.⁶ Weber testified that Maintenance employees also frequently interact with Packaging employees on the Packing Floor and interact with Quality employees when the total parts oxygen are low, or when they change over the can seamer in Packaging. Nevertheless, the record makes clear that Maintenance employees are not directly responsible for the quality of the product or its packaging.

E. Quality

In addition to Quality Manager Michael Brennan, there are two managers in Quality: Manager, Packing Quality Monica Hayward and Assistant QA Manager, Brewing Andrew Jones. Quality operates laboratories for Brewing and Packaging, as well as a Micro Lab. There are 18 employees in Quality: nine are assigned to Brewing (QA Brewing lab technicians), five are assigned to Packaging (QA Packaging lab technicians), and four are assigned to the Micro Lab (QA Microbiology technicians).

⁶ In fact, Weber acknowledged that although he had been the Engineering & Maintenance manager for over a year, he did not know the name of a single brewing operator.

All Quality lab technicians have four-year college degrees and specialized knowledge of biology, chemistry or a related subject. They also typically have two to five years of experience in a related field, are proficient in Word, Excel, Access, QI Analyst, and have basic knowledge of Statistical Process Control before they are hired by the Employer.

Quality is responsible for ensuring that all of the products produced at the Brewery are of a consistently high standard. To accomplish this objective, every time a batch of product is moved from Brewing to Packaging or from Packaging to Warehouse, it is tested by Quality either in the two satellite labs in the Brewery which are calibrated and maintained by the QA Brewing lab technicians or in the lab in Quality. At the beginning of the process, the QA Brewing lab technicians go to the Brew House to get samples of the wort about every six hours. They then continue their testing throughout the fermentation process. Typically, Quality is testing alcohol levels, color, BU, sugar, PH, haze, and VDK. The microbiology technicians also test for bacteria and sample the yeast once per eight-hour shift and sample the yeast in the fermenter once per day. The quality technicians may consult with the brewing operators when taking the samples to ensure that the liquid is in a steady state before the sample is taken, and it can take a few minutes for that state to be reached.

At the end of the process and prior to packaging, the QA Brewing lab technicians run a full analysis, testing the PH, bitterness units, color and gravity analysis. If the QA Brewing lab technicians need information during this time, they may ask a brewing operator, brewing supervisor, or a lead for it. Sometimes, cooler operators, who are brewing operators, will take samples for the QA Brewing technicians; however, the record does not disclose how often this occurs.

The QA Brewing lab technicians use a computer system called LIM (Laboratory Information Management) which tells them which samples to take and when. When the QA Brewing lab technicians complete their testing, the results are input into the computer system, which tells the brewing operator whether to cool the product and release it to the next step in the process or set the batch for another check, typically in another 12 hours.

Unlike QA Brewing lab technicians, QA Packaging lab technicians are not required to have a four-year college degree. They go to the Packing Floor and get samples, which they then take back to their Packaging Lab in Quality. They check for packaging defects, verify the carbon dioxide levels and fill levels, check the total package oxygen, and then run product through pasteurizers. They also monitor the weight of the filled can or bottle. QA Packaging lab technicians may interact with Packaging employees when taking the samples or performing their audits. If the QA Packaging lab technician finds an issue with any of the packaging specifications, the production line may be held or shut down. The record is not clear as to how frequently QA Packaging technicians interact with packaging employees or how often the packaging line is shut down due to Quality issues.

F. Working Conditions Common to All Departments

1. Wages

There is no dispute that the employees in Brewing share many of the same general working conditions and benefits as the employees in Packaging, Warehouse, Maintenance, and Quality. All employees, except for Maintenance employees, are paid based upon the same hourly wage scale: a starting base rate of \$16.48, and \$17.85 after a 90-day review. However, brewing operators receive a \$2 per hour differential after they are certified as being “fully qualified” by the Brewing Department. This would ordinarily occur sometime after a year of employment and after the employee has requested that such a review occur. The Employer instituted the brewing operator differential five years ago after it launched some new products and was having difficulty attracting and retaining brewing operators. The only other employees who receive a wage differential are the Leads in all of the other departments, who also receive an additional \$2 per hour. All employees receive a \$.40 per hour night shift differential when they perform night work. All employees receive a three percent annual increase to their base pay rate in March of each year. The Employer offers the same short-term incentive bonus to all employees, which is based upon attendance at work and quality cases of product “out the door.”

In Maintenance, however, the employees are paid on a substantially different scale according to their skill level. Maintenance technicians are paid on a scale ranging from \$27.45 to \$36.42 per hour, depending on the product line on which they work. In addition, instrumentation engineer wage rates range from \$38.02 per hour to \$40.40 per hour, and instrumentation technicians’ wage rates range from \$32.65 per hour to \$36.42 per hour.

2. Working Hours

Nearly all departments at the Brewery have a Sunday to Saturday work week, and employees are paid on a weekly basis. The Employer uses the same timekeeping system (Kronos) for all of its employees, and all employees must punch in and out but there are separate doors and means of ingress and egress in each of the departments. All employees in Brewing, Packaging and Warehouse work 12-hour shifts throughout the week from 6:00 a.m. to 6:00 p.m., and 6:00 p.m. to 6:00 a.m. which are known as the “A,” “B,” “C,” and “D” shifts. Maintenance employees, however, work eight-hour shifts as well as two brewing operators who work in the South Warehouse. Overtime work is usually offered to employees within their own department but there is some evidence that the Employer occasionally offers employees the opportunity to work overtime in certain non-skilled positions in Packaging. Only Brewing employees can perform overtime work in Brewing.

Employees are provided with the same lunch and break times but these times are scattered throughout the lunch period. Most of the employees eat in their own departments as there are separate lunchrooms in Brewing, Packaging, Warehouse, and Quality. Maintenance employees do not have their own lunchroom so they eat either in the lunch room in the Brew House or in the Twisted Tavern, which is a cafe area in the front area of the Brewery. The record is not clear as to how many Maintenance employees choose to eat in the Brew

House or how frequently this occurs. All employees are able to utilize the amenities provided by the Employer such as the hot lunches and food trucks when they are offered.

3. Employee Benefits

It is undisputed that all of the Brewery employees receive the same benefits with respect to medical, dental, vision, life and disability insurance; vacation, paid time off, holidays, paid parental leave and bereavement leave, 401(k) benefits, new parent and adoption assistance benefits, tuition assistance, stock purchase plan, and investment share plan. All employees have the same access to the Employer's promotional product program (free beer) and vendor discount programs. The Employer holds beer socials during which employees come to the Bierstube, a large conference room on the second floor of the Brewery, to enjoy complimentary beer. The Employer also holds special events like "Cookies with Santa" and beer giveaways which are open to all of its employees.

4. Uniforms

All Brewery employees except Maintenance employees are provided with the same uniforms. The employees receive work pants, jackets, shirts (t-shirts in the summer and long-sleeved shirts and sweatshirts in the winter), as well as coats with their names embroidered on the front. Maintenance employees are provided with fire-retardant high visibility shirts in fluorescent colors for safety since they work in close proximity to electrical wiring and other potential hazards. Maintenance uniforms must therefore be laundered professionally and such services are provided by the Employer.

5. Work Rules, Orientation, and Communication

The same labor relations policies apply to all employees. The Employer's handbook, the "American Craft Brewery Employee Handbook," applies to all employees. All new hires are required to complete a two-day orientation, which is held in the Bierstube once a month. The Employer also holds "town hall"-type meetings every Tuesday and Thursday, which are led by Brewery Director Luis Mar. All Brewery employees across all departments and shifts attend these meetings, during which department managers present updates as to what is occurring in their respective departments. During the work day, the Employer communicates with all of its employees by email and by Marlin boards, which are community posting monitors that are set up throughout the Brewery.

G. Separate Supervision

The Brewing, Packaging, Warehouse, Maintenance, and Quality departments have separate supervision, and each department manager and their supervisors are responsible for the employees in their own department, although they all report to Brewery Director Luis Mar. There is no evidence that any manager or supervisor has ever supervised, directed, disciplined, evaluated, approved time off or overtime for, or in any way affected the terms or conditions of employment of any employees outside their own respective departments.

In addition, while hiring at the Brewery is coordinated by the Human Resources department, which performs the initial screening and interviews of applicants, all applicants, whether they are existing employees or new hires, are required to interview with the manager and one to two supervisors from the department in which they are seeking a position as well as with Human Resources Manager Dana Miller and Brewery Director Luis Mar. With respect to vacancies, Human Resources works with the individual hiring department's manager to create a job posting. Hiring department managers only participate in the hiring process for their own departments and do not interview applicants for any other departments.

H. Employee Transfer

The record contains some examples of employees transferring from another department into Brewing or vice versa. At the end of 2017, brewing operators Richard Colon and Derek Gillen transferred from Brewing to Packaging. Then soon after in February 2018, Gillen transferred back to Brewing. On March 12, 2018, Rami Moussa transferred from Brewing to Packaging to serve as a temporary supervisor while a supervisor is out on disability leave.⁷ On August 13, 2018, Barry Picken transferred from Packaging to Brewing. On November 4, 2018, Israel Maldonado transferred from Packaging to Brewing. In each of these instances, the employee had to be re-interviewed and re-hired for the position, as well as trained on the new position – just as a newly hired employee would have been required to do. Eugene Kline transferred from Brewing to Maintenance Planning, and employee David Moyer transferred out of Brewing (Mixed Blend) into Maintenance, but it is unclear when this occurred. Four years ago, brewing operator Rodney Newhard transferred from Brewing to QA Packaging.

Although the record also contains testimony that current brewing operator Brett Funk used to be a Warehouse operator and that current brewing operator Francis Defebo used to be a Packaging technician, it is unclear when these individuals were hired in Brewing. It is clear, however, that both employees were interviewed by a Brewing manager and supervisors prior to their hire in Brewing, and once hired, they received the same extensive training that all other brewing operators are required to receive.

As to transfer between Brewing and Quality, brewing operators do not generally transfer to QA Brewing because the QA Brewing lab technicians are required to have a four-year degree. The record disclosed that the two brewing operators who recently applied to Quality were both rejected because they did not have the requisite level of education for that position. For at least the last 10 years, no QA Brewing technician has become a brewing operator. One QA Packaging lab technician had previously been a brewing operator 20 years ago. With regard to Maintenance, the record makes clear that due to the highly specialized nature of that work, while employees may move within classifications in Maintenance, they do not transfer to Brewing or to any other department.

⁷ Prior to this temporary promotion, Moussa worked as a brewing operator for six to seven years and was a temporary brewing lead for 1.5 years.

I. Employee Interchange

With respect to the direct interchange between Brewing operators and those in the other departments, the record disclosed only one instance of interchange for one day. In the summer of 2018, the Employer offered Brewing operators the opportunity to perform overtime work in Packaging manually filling the variety pack line. One brewing operator, Brian Walsh, did so for one day. No advance training was required for the assignment. As to the other departments, the only evidence of interchange involved Quality lab technicians working in Packaging. While Quality lab technicians usually perform overtime work only within their own department, during the last six weeks, the Employer offered employees the opportunity to perform temporary overtime work in packaging and two QA Packaging technicians have done so.

J. Integration of Operations and Employee Interaction

There is no question that the Employer operates a highly automated production facility, and all of its employees contribute to the production of the same products. Consequently, when something goes wrong in one department, it can have a domino effect impacting the productivity in all three departments. For example, when the brewing operators produce a bad batch of product, it obviously cannot be sent to Packaging or to the Warehouse. Similarly, when there is an issue in the packaging line, it can delay brewing operations.

To ensure a seamless operation, employees in one department may necessarily have brief interactions with those in another department. These interactions may be infrequent or regular, depending on the department and job classification. For example, some brewing operators and QA Brewing lab technicians may interact on a limited basis when the QA Brewing lab technicians enter the Brew House to take samples of liquid product for testing. However, Brewing Operator Carl O'Brien testified that his only interaction with Quality employees was to "say hello" when they came to his work area to take samples for testing. Similarly, QA Packaging lab technicians and Packaging employees may interact when QA Packaging technicians visit the Packing Floor to take samples of packaged product for testing in their lab in Quality. However, there is no indication that such interaction is anything other than an exchange of pleasantries.

There is some evidence that employees in the different departments have brief interactions with one another when moving the product along to the next step in the process. For example, Pit operators from Brewing may interact with filler operators from Packaging when transferring product from Brewing to Packaging in the tanks. Warehouse employees may briefly interact with Packaging employees when they are retrieving product from the Packing Floor. Warehouse employees may also interact with employees in Packaging when delivering supplies, and may interact with either Packaging or Brewing employees when taking inventory. Finally, Maintenance employees may have occasion to interact with employees in any of the departments when making their repairs or working on the equipment.

Critically, however, as to interactions between the brewing operators and other employees, O'Brien, a brewing operator for over 5 years, testified that he had no interaction with Packaging or Warehouse employees. Additionally, while Temporary Packaging Supervisor Ramie Moussa testified that he interacted with brewing operators "a couple of times a week," he also acknowledged that he sought out the brewing operators because he was recently one himself and had some friends among them. Accordingly, Moussa's experience may not be an accurate reflection of what in fact occurs between Brewing or Packaging employees, nor can it fairly be relied upon to establish frequent interactions and functional integration.

V. LEGAL ANALYSIS AND CONCLUSIONS

As stated earlier, the Board analyzes the traditional community-of-interest factors to determine whether a petitioned-for group of employees has a distinct community-of-interest such that they constitute an appropriate unit. *PCC Structural*s, supra, slip op. at 7. A careful analysis of the community-of-interest factors, i.e., whether the petitioned-for employees work in a separate department; have separate supervision; possess distinct skills and training; have distinct job functions and perform distinct work; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; and are subject to distinct terms and conditions of employment, to the facts herein amply establishes that the Brewing operators constitute a recognizably different group which has a distinct community of interest from all of the other employees at the Brewery.

Importantly, the Brewing department is physically separate from the other departments in the building, and other than the two brewing operators who are assigned to work in the South Warehouse maintaining the kegs, most of the brewing operators perform their tasks in the Brew House area. They unload their supplies in the Brew House using their own lift to do so, store their supplies there, take their own inventory, use a unique software program on computers in Brewing, and produce the beer and other products there. While some Quality employees (such as the Quality Brewing lab technicians) and some Maintenance employees necessarily perform some of their job functions in the Brew House because that is where the product is located for testing or where the equipment is for repair, this limited overlap is insufficient to render the petitioned-for unit inappropriate.

In addition to a generally separate work area, brewing operators also perform a distinct job function from all of the other employees in the Brewery as they make the beer or mixed blend beverages. No other classification of employee is qualified to perform this task nor are they able to do so. As is clearly supported by the record, brewing operators have specialized skills and more extensive training than the other employees in the other departments. It takes at least a year for brewing operators to become fully qualified in all of the Brewing functions, and two to three months to train on just one job classification. This is in sharp contrast from the three to four week training period in Packaging or the two-week training period in the Warehouse.⁸ Indeed, the \$2 per hour pay differential that only brewing operators receive

⁸ The record contains no evidence as to how long it takes to train Maintenance employees.

supports the finding that their work requires some greater skill than work in the other departments.

Moreover, the brewing operators are separately supervised by Brewing Manager Scott Thornton and the eight supervisors in the department, and no managers or supervisors from any other department affect their working conditions in any meaningful way. Brewing managers and supervisors assist in the development of Brewing job postings, interview Brewing applicants, participate in Brewing hiring decisions, and are solely responsible for the day-to-day operation of the Brewing department. The fact that the Employer also maintains a centralized Human Resources department which assists in the hiring process does not negate the separate supervisory function of the Manager and supervisors in that department. Further, there is no evidence that the Brewing Manager and supervisors consult with Human Resources with respect to any of the hallmarks of supervisory function such as: discipline; assignment of work; evaluation (including whether to fully qualify a brewing operator for the \$2 per hour differential); granting of time off; authorization of overtime; resolution of work-related issues, etc.

Since the brewing operator's work is so specific and highly skilled, the employees in the other departments are not qualified or able to perform brewing operator work. Accordingly, there is no evidence of significant widespread interchange between brewing operators and those in the other departments, and there is certainly nothing to suggest blurred departmental lines or a truly fluid workforce with roughly comparable skills. See *Hilton Hotel Corp.*, supra at 360. Brewing operators do not operate a can or bottle line in Packaging, stack cases of completed product in Warehouse, perform microbiology testing in the Quality lab, or repair centrifuges or boilers like Maintenance employees. Although the Employer may occasionally offer Brewing employees the opportunity to work overtime in Packaging, the evidence discloses only one instance in which a Brewing employee availed himself of that opportunity, and that occurred on a single day. That one instance, or the hypothetical opportunity for brewing operators to work overtime in Packaging in the future, does not establish that only a wall-to-wall unit is appropriate.

The infrequency of permanent transfer between Brewing employees and those in the other departments that the Employer is seeking to include also illustrates this point. In the last seven years, there were only a few instances among the Employer's 380 employees who transferred into or out of Brewing. Moreover, the fact that all of these employees had to be re-interviewed and re-hired for the position, as well as trained in all of the Brewing competencies supports the finding that brewing operators have a distinct community of interest for which a separate unit is appropriate.

Although there is a degree of functional integration in the Employer's operation, and brewing operators necessarily interact with the other employees from Quality and Maintenance who are performing their work in the Brewing department, there is conflicting evidence in the record concerning the frequency of such contact. However, even if such contact were frequent and regular, that alone would not adequately support the Employer's argument for a single wall-to-wall unit here. See *Yuengling Brewing*, supra, 333 NLRB at 893. In *Yuengling Brewing*, the Board found in a similar operation that a significant degree of interaction between the

maintenance and production employees, by itself, was not sufficient to negate the appropriateness of a separate maintenance unit where there was also no common supervision between the maintenance employees and the production employees, the maintenance work was highly skilled and maintenance employees were paid a higher wage, and there was no interchange between maintenance and production employees except for some overlapping of unskilled functions. *Id.*

Similarly, the fact that all of the Brewery's employees are subject to the same labor relations policies, receive the same employee benefits, and attend general staff meetings across departments, or that the Brewing, Packaging, Warehouse, and Quality employees are paid on the same wage scale, work the same shifts, and wear the same uniforms does not negate the brewing operators' distinct community of interest. *Id.*

In addition to working different shifts and wearing different uniforms than Maintenance employees, brewing operators have very little in common with Maintenance employees -- whom the Employer seeks to include in their bargaining unit -- as Maintenance employees have an entirely different skill set, and are compensated at more than twice the wage rate of brewing operators. Given that the Board has historically favored separate maintenance department units in production settings,⁹ and taking into account the specific facts herein, there is no support for *requiring* their inclusion, when the Petitioner seeks to represent only the brewing operators.

Lastly, the Employer argues that a bargaining history at this facility in a wall-to-wall unit from 1981 until 2000 under three prior employers, favors a strong presumption in favor of continuing to find a wall-to-wall unit appropriate at the facility. Citing *Canal Carting*, 339 NLRB 969 (2003), the Employer argues that the time-gap in representation and the change in labor organization does not overcome the strong presumption in favor of respecting the historical bargaining unit. However, in *Canal Carting*, the bargaining history involved the very same employer. The Board affords less weight to such history when the employer is not a successor to the employer with the bargaining history. See *Turner Industries Group*, *supra*. Here, not only is the Employer not a successor, but it is several employers removed from the employer whose employees were organized, and only six out of 380 employees were employed at the Brewery when it was represented. Further, the record contains only conclusionary statements and little evidence concerning the similarities of the Employer's operation to the prior employers' operations. As such, I find that there is no direct history of bargaining to render the petitioned-for unit inappropriate. Similarly, I reject the Employer's assertions that there exists a "brewing industry practice," requiring only wall-to-wall units,¹⁰ and that its wall-to-wall unit in Cincinnati is evidence that the petitioned-for unit is inappropriate.

⁹ *American Cyanamid Co.*, 131 NLRB 909 (1961).

¹⁰ In a brewery case many years ago, the Board stated:

The circumstance that the employees in question have been represented on a more comprehensive basis for several years is not sufficient in itself to deny them the opportunity of deciding at the present time whether they desire to continue to be represented as part of the production and maintenance unit or whether they desire to bargain as a separate unit. *Consumer's Brewing Co.*, 77 NLRB 1244, 1245 (1948).

In summary, the Act does not require that the Petitioner seek the most appropriate unit – only that it be *an* appropriate unit – and the Board attempts to select the smallest appropriate unit from the petitioned-for employee classifications. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *R & D Trucking, Inc.*, 327 NLRB 531 (1999). The Petitioner has established that the brewing operators have a distinct community-of-interest because they work in a separate department; are separately supervised; possess highly specialized and distinct skills; earn different wages; perform distinct job functions and responsibilities, and are required to undergo more extensive training than the employees in Packaging, Warehouse, Maintenance and Quality. In addition, there is an absence of any meaningful employee interchange or significant permanent transfer between the employees in Brewing and in the other departments. Although there is some functional integration and contact between the employees in Brewing and the other departments, and all of the Brewery employees are subject to the same work rules and labor relations policies, and receive the same employee benefits, those facts do not overcome the other more significant facts which support the appropriateness of a separate unit. Thus, the brewing operators' meaningfully distinct interests outweigh any similarities that they may have with the employees in the other departments. *PCC Structural, Inc.*, *supra*, slip op. at 11.¹¹ While there may well be other appropriate units at this facility, the record firmly establishes that the brewing operators are *an appropriate unit* and the smallest appropriate unit sought by the Petitioner.

VI. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

¹¹ Cf. *Jos. Schlitz Brewing Co.*, 192 NLRB 553 (1971) (where a petitioner was seeking a production and maintenance unit, but an intervenor was seeking a separate unit of electrical workers, carpenters, and steamfitters, the Board found appropriate a unit of production and maintenance employees in a brewery relying on the overlap of job duties, the common supervision, the common location of the production lines and the shared responsibility for and participation in the operation of the equipment). Similarly, in *F. & M. Schaefer Brewing Co.*, 198 NLRB 323 (1972), which the Employer heavily relies on, the overall unit found appropriate was sought by two of the Petitioners, and no union sought a separate unit of brewing operators.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time brewing operators employed at the Employer's 7880 Penn Drive, Breinigsville, Pennsylvania facility, **excluding** all other employees, administrative employees, office clericals, professional employees, managers, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Union of Operating Engineers, Local 542**.

A. Election Details

The election will be held on **Tuesday, December 18 AND Thursday, December 20, 2018**, from **5:00 a.m. to 7:00 a.m.** in the "Brewing Education Center" at the Employer's facility located at 7880 Penn Drive, Breinigsville, Pennsylvania.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **December 8, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also, eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3)

employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Friday, December 14, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found

appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this Decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: December 12, 2018

/s/ Dennis P. Walsh

DENNIS P. WALSH

Regional Director, Region Four
National Labor Relations Board